

1 KAREN P. HEWITT
United States Attorney
2 CHRISTOPHER S. STRAUSS
Special Assistant U.S. Attorney
3 United States Attorney's Office
880 Front Street, Room 6293
4 San Diego, California 92101-8893

5 Attorneys for Plaintiff
United States of America
6
7
8

9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

11)
12)
13 UNITED STATES OF AMERICA,)

14 Plaintiff,)

15 v.)

16 FE S. GARRETT)

17 Defendant.)
18)
19)
20)
21)
22)
23)
24)
25)
26)
27)
28)

Criminal Case No. 08CR0918-L

GOVERNMENT'S NOTICE OF INTENT TO
INTRODUCE SUMMARY EXPERT
WITNESS TESTIMONY AND REQUEST
FOR RECIPROCAL DISCOVERY

Fed. R. Crim. P. 16(a)(1)(G) and 16(b)(1)(C);
Fed. R. Evid. 702

Plaintiff, United States of America, by and through its counsel Karen P. Hewitt, United States Attorney, and Christopher S. Strauss, Special Assistant United States Attorney, hereby submits its Notice of Intent to Introduce Summary Expert Witness Testimony, pursuant to Federal Rule of Criminal Procedure 16(a)(1)(G) and Federal Rule of Evidence 702.

NOTICE

Near the end of its case-in-chief, the Government will call a summary expert witness trained in taxation and accounting. This witness will be Revenue Agent Emeterio Ramirez. Mr. Ramirez will provide an analysis of the summaries of the bank account records introduced pursuant to Fed. R.

1 Evid. 1006,^{1/} tax returns and other evidence introduced at trial and explain the tax consequences of
 2 the Government's evidence. Specifically, the witness will (1) compute the defendant's business
 3 gross receipts; (2) testify regarding the defendant's expenditures; (3) testify regarding the defendant's
 4 non-payment of federal income taxes based upon Internal Revenue Service records; (4) testify as to
 5 income tax consequences of under-reporting business income; and (5) testify as to income tax
 6 consequences of claiming false deductions on federal income tax returns. Mr. Ramirez's resume is
 7 attached.

8 The Federal Rules of Evidence provide that an expert witness may testify "if . . . other
 9 specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in
 10 issue" Fed.R. Evid. 702. Trial courts consistently have approved the use of an expert witness
 11 in criminal tax prosecutions. See United States v. Marchini, 797 F.2d 759, 766 (9th Cir. 1986);
 12 United States v. Mikutowicz, 365 F.3d. 65, 72 (1st Cir. 2004); United States v. Tarwater, 308 F.3d
 13 494, 512-14 (6th Cir. 2002); United States v. Windfelder, 790 F.2d 576, 581 (7th Cir. 1986). Expert
 14 testimony by an I.R.S. agent that expresses an opinion as to the proper tax consequence of a
 15 transaction is admissible evidence. United States v. Clardy, 612 F.2d 1139, 1153 (9th Cir. 1980).

16 Through the expert witness, the Government will offer summary schedules and income and
 17 tax computations prepared based upon the evidence adduced at trial. The schedules will be prepared
 18 based on evidence that has been admitted at trial, including the Rule 1006 summaries of bank
 19 account records described above. The use of such summary schedules and charts has been approved
 20 by the Ninth Circuit. United States v. Soulard, 730 F.2d 1292, 1300 (9th Cir. 1984); United States v.
 21 Gardner, 611 F.2d 770, 776 (9th Cir. 1980).

22 The summary schedules and income and tax computations, because they will reflect evidence
 23 that is admitted at trial, by necessity will not be finalized until shortly before the summary witness's
 24 testimony. Draft schedules which reflect the income and tax consequences of the evidence the

25
 26 ^{1/}The Government has given notice to the defendant in a separate pleading of its intent to
 27 introduce summaries of voluminous bank records in lieu of introducing the bank records themselves
 pursuant to Fed. R. Evid. 1006.

1 Government anticipates will be admitted will be provided to the defendant well in advance of trial;
2 finalized copies of these schedules will be provided to the Court and defense counsel shortly before
3 the expert witness's testimony.

4 The Government intends to move the Court to permit the Government to introduce summary
5 schedules of bank account records in lieu of introducing the underlying bank account records
6 pursuant to Fed. R. Evid. 1006. Those summaries and other underlying documentary evidence used
7 in creating the ultimate summary schedules and computations for trial will be marked as evidence.

8 GOVERNMENT'S REQUEST FOR RECIPROCAL DISCOVERY

9 Pursuant to Rule 16(b)(1)(C) and the expert disclosures provided herein, the government
10 requests the disclosure of the defendants' experts, if any, including a written summary of the
11 experts' testimony.

12 CONCLUSION

13 The Government hereby provides notice of the name, curricula vitae, and subject matter of
14 the Government's expert witness's testimony to the defendant. Draft schedules, which explain the
15 witness's conclusions as to the probable tax consequences of the evidence the Government
16 anticipates will be admitted into evidence and the bases of those conclusions will be provided to the
17 defendant well in advance of trial.

18 The Government reserves the right to seek the Court's permission for offer of additional
19 experts and to amend any draft summary schedule provided to the defense in advance of trial based
20 upon the evidence admitted at trial. The Government also requests the Court order the defendant to
21 disclose any defense expert witnesses consistent with Fed. R. Crim. P. 16(b)(1)(C).

22 DATED: July 31, 2008

23
24 /s/ Christopher S. Strauss
25 Christopher S. Strauss
26 Special Assistant United States Attorney
27 Attorney for Plaintiff
United States of America
Email: Christopher.S.Strauss@usdoj.gov

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,) Case No. 08CR0918-L
Plaintiff,)
v.)
FE S. GARRETT,)
Defendant.)

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED THAT:

I, Christopher S. Strauss, am a citizen of the United States and am at least eighteen years of age.
My business address is 880 Front Street, Room 6293, San Diego, California 92101-8893.

I am not a party to the above-entitled action.

I have caused service of GOVERNMENT'S NOTICE OF INTENT TO INTRODUCE
SUMMARY EXPERT WITNESS TESTIMONY AND REQUEST FOR RECIPROCAL DISCOVERY
on defendant FE S. GARRETT, pro se, by sending a copy of the motion via Federal Express on July 31,
2008 to defendant at the following address:

The Geo Group
Reg. # 0799-0298
Western Region Detention Facility
220 West C Street
San Diego, CA 92101

//

1 I have caused service of GOVERNMENT'S NOTICE OF INTENT TO INTRODUCE
2 SUMMARY EXPERT WITNESS TESTIMONY AND REQUEST FOR RECIPROCAL DISCOVERY
3 on defendant's standby counsel by electronically filing the foregoing with the Clerk of the District Court
4 using its ECF System, which electronically notifies them:
5

6 Erica Kristine Zunkel
7 Federal Defenders of San Diego
8 225 Broadway, Suite 900
9 San Diego, CA 92101

Erica_zunkel@fd.org

10 I declare under penalty of perjury that the foregoing is true and correct.

11 Executed on July 31, 2008.

12 /s/ Christopher S. Strauss
13 CHRISTOPHER S. STRAUSS
14 Special Assistant United States Attorney
15
16
17
18
19
20
21
22
23
24
25
26
27
28